

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ARC AIRBAG INFLATORS
PRODUCTS LIABILITY
LITIGATION

MDL No. 3051
Case No. 1:22-md-03051-ELR

**PLAINTIFFS' MOTION FOR JURISDICTIONAL DISCOVERY WITH
RESPECT TO DEFENDANT ZF FRIEDRICHSHAFEN AG
AND INCORPORATED MEMORANDUM OF LAW**

PRELIMINARY STATEMENT

Plaintiffs allege foreign Defendant ZF Friedrichshafen AG (“ZF Germany”), along with four domestic subsidiaries (the “Domestic ZF Defendants,” and together with ZF Germany, the “ZF Defendants”), designed and manufactured airbag modules that contain defective ARC inflators. Plaintiffs allege the ZF Defendants worked closely with ARC to develop the inflators; knew about actual inflator ruptures in testing situations and in the field; and understood the over-pressurization danger posed by the inflators’ design and the attendant risks due to the inflators’ use of volatile ammonium nitrate. Plaintiffs also allege ZF Germany, a foreign corporation, integrated its operations closely with those of its domestic subsidiaries.

ZF Germany moved to dismiss Plaintiffs’ claims against it for lack of personal jurisdiction. Doc. 279. Plaintiffs have opposed that motion, arguing ZF Germany is subject to this Court’s personal jurisdiction. Doc. 293.

Although Plaintiffs submit that the Court has jurisdiction over ZF Germany, Plaintiffs hereby move in the alternative for leave to conduct jurisdictional discovery. Specifically, Plaintiffs seek limited discovery into ZF Germany’s relationship with its domestic subsidiaries and, accordingly, its relationship with the transferor forum state of Michigan. If the Court determines that Plaintiffs’ allegations are not sufficient to support personal jurisdiction over ZF Germany but

that a genuine dispute exists as to whether jurisdiction is appropriate, it should grant this motion and hold ZF Germany's motion to dismiss in abeyance pending jurisdictional discovery.

ARGUMENT¹

If the Court determines Plaintiffs have not made a *prima facie* case of personal jurisdiction over ZF Germany, it should permit Plaintiffs to conduct limited jurisdictional discovery regarding ZF Germany's relationship with the Domestic ZF Defendants and their respective roles with respect to the Defective Inflators. Specifically, Plaintiffs would take limited discovery to examine the extent to which, among other things, (1) ZF Germany oversaw the Domestic ZF Defendants' design, manufacture, or sale of airbag modules in the United States; (2) ZF Germany supervised ZF TRW Corp.'s safety testing of airbag modules; (3) ZF Germany knew of the risks posed by airbags that contained Defective Inflators; and (4) ZF Germany assumed the liabilities of ZF TRW Corp. when purchasing its predecessor, TRW Automotive Holdings Corp., in 2015.

Courts generally permit jurisdictional discovery if "there is a genuine dispute as to whether exercising personal jurisdiction . . . would be appropriate." *Doherty-Heinze v. Chrisley*, 2021 WL 12149533, at *5 (N.D. Ga. Dec. 21, 2021).

¹ Plaintiffs hereby incorporate their Memorandum of Law in Opposition to ZF Germany's Motion to Dismiss. Doc. 293.

Although this Court ordinarily enjoys “broad discretion” over matters relating to discovery, “jurisdictional discovery is not entirely discretionary.” *ACLU of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1340 (11th Cir. 2017) (quoting *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729 (11th Cir. 1982)). Where a genuine dispute exists, “a plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.” *Seiz v. Quirk*, 2013 WL 12290850, at *2 (N.D. Ga. Jan. 3, 2013).

The subjects of discovery Plaintiffs would seek are similar to those courts routinely allow. For instance, in *Luc v. Korean Air Lines Co.*, Judge May of this District permitted discovery “on the narrow issue of jurisdiction; specifically, whether [a domestic subsidiary] has sufficient contacts with Georgia and whether [the subsidiary] is the alter ego or wholly owned subsidiary of [its foreign parent].” 2019 WL 7824584, at *4 (N.D. Ga. June 4, 2019). There, as here, the case was “still early in discovery” and the plaintiff had “not yet had an opportunity to discover all potential facts relating to these theories.” *Id.* at *3. As Plaintiffs have specified their proposed discovery and demonstrated why this information would be “relevant” to ZF Germany’s arguments for dismissal, jurisdictional discovery would be appropriate if the Court determines Plaintiffs have not at this point made a *prima facie* case for personal jurisdiction. *Seiz*, 2013 WL 12290850, at *6.

CONCLUSION

Should the Court determine Plaintiffs have not sufficiently demonstrated personal jurisdiction as to ZF Germany, it should allow Plaintiffs to conduct jurisdictional discovery into ZF Germany and the Domestic ZF Defendants as set forth above.

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CERTIFICATION

Pursuant to Civil Local Rule 7.1(D), the undersigned counsel certifies that this brief has been prepared with 14-point Times New Roman, as approved by the Court in Civil Local Rule 5.1(C).

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